



U.S. Department
of Transportation

**Federal Transit
Administration**

Administrator

1200 New Jersey Avenue, SE
Washington, DC 20590

JUL 01 2013

Mr. Andrew Imanse
Group President
Commercial Bus & Ambulance Division
Thor Industries, Inc.
9670 Galena Street
Riverside, CA 92509

Dear Mr. Imanse:

I write in response to your letter to Brian Farber with the Federal Transit Administration (FTA) requesting a determination by the FTA of whether the processes used by EIDorado National-Kansas (EIDorado) to convert an incomplete Chrysler or Dodge minivan into the EIDorado Amerivan are sufficient to meet the Buy America final assembly requirements. For the reasons outlined in the enclosed memorandum, I am pleased to inform you of FTA's conclusion that the activities that take place during EIDorado's conversion processes constitute final assembly for minivans converted for wheelchair access.

FTA appreciates your commitment to its Buy America rules. Paramount in FTA's role as a steward of U.S. taxpayer dollars is to ensure that the use of such funds preserves and creates U.S. jobs. The intent and purpose of the Buy America requirement is to further this goal by ensuring that FTA-administered funds are used to purchase goods that are produced in the United States. FTA's commitment to ensuring Buy America compliance has resulted in a dramatic reduction in the number of waivers it has granted, from 52 in fiscal year (FY) 2010, 14 in FY 2011, 3 in FY 2012, and zero in FY 2013. Upon reviewing your request for guidance, it is apparent that EIDorado shares FTA's commitment to preserving and creating jobs in the United States.

If I can provide further information or assistance, please do not hesitate to contact me directly at (202) 366-4040.

Sincerely yours,

Peter Rogoff

Enclosure



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Memorandum

Subject: Determination as to whether the process by which EIDorado National-Kansas converts incomplete Chrysler and Dodge minivans into EIDorado Amerivans satisfies FTA's Buy America requirements for final assembly. Date: JUN 28 2013

From: Dorval R. Carter, Jr., Chief Counsel  Reply to Attn. of: Mary J. Lee, Attorney-Advisor

To: Peter Rogoff, Administrator

The purpose of this memorandum is to document FTA's determination that the processes by which EIDorado National-Kansas (EIDorado) converts incomplete Chrysler and Dodge minivans into EIDorado Amerivans satisfies FTA's Buy America requirements for final assembly.

I. Background

a. *Rescission of Buy America Waiver for Minivans and Minivan Chassis*

On June 21, 2010, FTA issued a non-availability waiver of the Buy America final assembly requirement for all minivans and minivan chassis. *Notice of Buy America Waiver for Minivans and Minivan Chassis*, 75 Fed. Reg. 35,123. At that time, FTA determined that there was no manufacturer that was willing and able to perform final assembly on these types of vehicles in the United States. *Id.*

On August 3, 2012, FTA published a notice of a request to rescind the non-availability waiver for minivans and minivan chassis. 77 Fed. Reg. 46556. After reviewing and carefully considering all of the comments submitted pursuant to the request, FTA found that a domestic vehicle—the Vehicle Production Group's MV-1—is available that meets the Buy America final assembly requirements. Therefore, FTA determined that the waiver was no longer necessary and rescinded the waiver. *Decision to Rescind Buy America Waiver for Minivans and Minivan Chassis*, 77 Fed. Reg. 71,673 (Dec. 3, 2012).

By letter dated February 13, 2013, EIDorado made a formal request to FTA to determine whether its conversion processes were sufficient to meet the final assembly requirement under 49 C.F.R. § 661.11. In an April 30, 2013 letter, EIDorado requested the status of FTA's decision. FTA requested additional information in order to make a determination, which EIDorado provided by letter dated May 2, 2013. The letter included the results of a Buy America review conducted by a contractor, which found compliance, and a letter indicating that FTA recipients were asking for an FTA determination of Buy America compliance before they would purchase an Amerivan from EIDorado. On June 12, 2013, EIDorado again asked for the status of FTA's decision by letter. Finally, on June 25, 2013, EIDorado provided additional information upon FTA's request.

b. *EIDorado's Manufacturing Process for the Amerivan*

EIDorado's manufacturing and conversion processes to the incomplete Chrysler and Dodge minivans take place in Salina, Kansas. EIDorado's manufacturing processes consists of the following:

- (1) Removal, modification, then installation and interconnection of the rear axle, including rear axle height extensions, thereby modifying the (Original Equipment Manufacturer or) OEM rear axle installation, allowing for the chassis body to be raised for ground clearance to the lowered floor.
- (2) The motor is removed from the OEM chassis and motor mount extensions are added, thereby modifying the OEM engine installation allowing for the chassis body to be raised for ground clearance to the lowered floor.
- (3) Removal, then installation and interconnection of cooling and braking systems, and interconnection of new heating and air conditioning components.
- (4) Removal, modification, then installation and interconnection of an enhanced electrical harness allowing for integration of the mini-van conversion options to fully function with the OEM electrical and door systems.
- (5) The mini-van conversion incorporates a ramp, rather than a lift. Each providing a person of physical challenge functional accessibility to the van. . . .
- (6) Removal of the OEM steel floor structure from the fire wall to the rear axle floor contour, then installation and interconnection of a new stainless steel lowered floor assembly allowing entry of the vehicle to meet ADA requirements.
- (7) Removal and reinstallation of the driver and passenger designated seats on a new pedestal mount.
- (8) Installation of second row passenger designated seating positions, when ordered.
- (9) Removal and reinstallation of the third row passenger designated seats on a new pedestal mount.
- (10) Installation of additional lighting assemblies to meet [the Americans with Disabilities Act] requirements.
- (11) Removal, modification, then installation and interconnection of the suspension system.
- (12) Removal and reinstallation of the steering shaft.
- (13) Removal, modification, then installation and interconnection of the slider doors.
- (14) Removal, modification, then installation and interconnection of the fuel tank and fuel system.
- (15) Removal, modification, then replacement and interconnection of the exhaust system.

- (16) Road test to verify the assembly of the component parts upon completion of the manufacturing process/final assembly.
- (17) Water test to verify no leaks are encountered after manufacturing process/final assembly.
- (18) Final inspection of the component/final assembly, and finishing processes, i.e.; paint, undercoat.
- (19) Repairs are made to components, i.e.[,] ABS/plastic interior cosmetic effects, glass, sheet metal, as required.

EIDorado states that the performance of these activities in the United States employs approximately 85 to 100 people.

In addition, EIDorado inspects and tests the completed vehicle, and provides a copy of the Certificate of Origin for a Vehicle listing EIDorado as the second (and final) stage manufacturer.

Based upon the above-stated activities, EIDorado believes that its conversion activities are sufficient to meet FTA's Buy America regulations at 49 C.F.R. § 661 and Appendix D, has certified to this effect, and is requesting confirmation by FTA.

II. Buy America

a. *Buy America Requirements for Buses and Rail Cars*

Under 49 U.S.C. § 5323(j)(1), FTA may not obligate funds for a project unless the steel, iron, and manufactured goods used in a project are produced in the United States. For rolling stock procurements, this requirement does not apply if the cost of the components produced in the United States is more than 60 percent of the cost of all components and final assembly takes place in the United States. 49 U.S.C. § 5323(j)(2)(C); 49 C.F.R. § 661.11(a). Final assembly is defined as "the creation of the end product from individual elements brought together for that purpose through application of manufacturing processes." 49 C.F.R. § 661.11(r).

The typical minimum final assembly requirements for rolling stock are further provided in Appendix D to § 661.11 and distinguished between minimum final assembly requirements for rail cars and buses. FTA provided guidance on the final assembly requirement for buses in a March 18, 1997 Dear Colleague Letter on Buy America: Pre-Award and Post-Delivery Audits, which has been added to FTA's existing regulation and is still applicable today:

In the case of a new bus, final assembly would typically include, at a minimum, the installation and interconnection of the engine, transmission, axles, including the cooling and braking systems; the installation and interconnection of the heating and air conditioning equipment; the installation of pneumatic and electrical systems, door systems, passenger seats, passenger grab rails, destination signs, wheelchair lifts; and road testing, final inspection, repairs and preparation of the vehicles for delivery.

See also 49 C.F.R. § 661.11 app. D, para. b.

If a manufacturer's assembly processes do not include all of the activities typically considered final assembly, the manufacturer may request an FTA determination of compliance. FTA Dear Colleague Letter, March 18, 1997; 49 C.F.R. § 661.11 app. D, para. c. FTA reviews these requests for compliance case by case, based upon the information provided by the manufacturer. 49 C.F.R. § 661.11 app. D, para. c.

b. *Final Assembly Requirements for Minivans*

While FTA addresses the typical final assembly requirements for rolling stock such as buses and rail cars in its regulations and guidance documents, FTA has not specifically addressed the final assembly requirements for minivans and minivan chassis. Moreover, because the minivans at issue here are converted for wheelchair accessibility, the typical final assembly requirements for buses, and even other minivans that are not wheelchair accessible, may not apply because of the significant amount of manufacturing that takes place to the vehicle during the conversion processes. Thus, in order to show that wheelchair accessible minivans meet the Buy America requirement for final assembly, Eldorado must show that the wheelchair accessible minivans it manufactures is a different vehicle from the incomplete minivan that it receives from Chrysler or Dodge and that those processes include assembling the various components in the United States in order to produce a wheelchair-accessible minivan.

III. Discussion

Upon careful review of Eldorado's manufacturing processes in consultation with FTA engineers, I find that Eldorado's processes meets the final assembly requirement for rolling stock under 49 C.F.R. § 661.11(a) and (r). As stated above, in order to show that wheelchair accessible minivans meet the Buy America requirement for final assembly, a converted minivan that allows for wheelchair accessibility must be a different vehicle from the original Chrysler or Dodge minivan and those processes must include assembling the various components in the United States in order to produce a wheelchair accessible minivan. Eldorado makes substantial changes to the interior and exterior of the minivan, including, among other things, the fuel system, exhaust system, suspension, body, doors, seats, floor, wheelchair ramp, and wiring, which results in a different vehicle from the original Chrysler or Dodge minivan.

Once all of Eldorado's conversion and manufacturing processes in the United States are complete, Eldorado's vehicle is no longer a "Chrysler" or "Dodge" minivan. Instead, it becomes an "Eldorado Amerivan" with a wheelchair accessible ramp. Eldorado certifies itself as the second (and final) stage manufacturer of the vehicle, which entails responsibility for inspecting, testing, and certifying the vehicle.

Eldorado's processes for creating the Amerivan include assembling the various components in Salinas, Kansas. By making such substantial changes to the interior and exterior of the minivan in the United States, Eldorado engages in significant manufacturing activities that rise to the level of final assembly for minivans that are converted for wheelchair accessibility.

IV. Conclusion

Based upon the foregoing, I find that Eldorado's activities on the Chrysler or Dodge minivan are sufficient to satisfy the final assembly requirements under 49 C.F.R. § 661.11. This decision is limited solely to minivans that have been converted for wheelchair accessibility by Eldorado, as the final assembly processes are described in this memorandum. Deviations from these described processes may result in a different conclusion.